

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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PEDRO RIVERA,

Plaintiff,

**VERIFIED COMPLAINT
AND JURY TRIAL DEMAND**

-against-

INDEX NO. **07 CIV. 8788**

ASSIGNED JUDGE:

ALLSERVICES MAINTENANCE NY, INC.,

Defendant.
-----X

BRIANT

FILED
U.S. DISTRICT COURT
2007 OCT 12 A 9:13
S.D. OF N.Y. W.P.

Plaintiff Pedro Rivera, by and through the Law Office of Paul N. Cisternino, P.C.,
as and for his verified complaint, alleges as follows:

INTRODUCTION

1. This is an action against the defendant for the violation of plaintiff's federally guaranteed constitutional and civil rights and his rights as otherwise guaranteed under law.

2. Plaintiff seeks monetary compensation and other damages for the wrongful, illegal and unconstitutional acts of the defendant which violated rights guaranteed to the plaintiff under various federal and state laws, specifically the Americans with Disabilities Act of 1990 and the New York State Human Rights Law, New York Executive Law §290 *et seq.*

3. Plaintiff alleges herein that he was subjected to discrimination, denied the equal terms, conditions and privileges of employment and terminated based on disability.

JURISDICTION AND VENUE

4. The jurisdiction of this Honorable Court is invoked pursuant to and under 28 U.S.C. §§ 1331, 1343 and 1367.

5. The unlawful acts alleged herein were committed in whole or in part in the Southern District of New York.

ADMINISTRATIVE PROCEEDINGS

6. Plaintiff has satisfied all procedural requirements prior to commencing this action in that he timely filed charges of discrimination with the United States Equal Employment Opportunity Commission and his complaint was dual filed with the New York State Division of Human Rights. Plaintiff requested and received a written dismissal and Notice of Right to Sue from the Commission; the instant complaint has been filed within ninety days receipt thereof.

PARTIES

7. Plaintiff is a forty seven year-old Hispanic male who at all times relevant herein resided in Westchester County within the State of New York.

8. Upon information and belief the defendant is an “employer” within the meaning of 42 U.S.C. §2000 *et seq* and New York Executive Law §290 *et seq*.

ALLEGATIONS

9. Plaintiff hereby repeats and realleges each allegation contained in paragraphs “1” through “8” as if fully set forth herein.

10. Plaintiff, who suffers from high blood pressure and related problems which require medical attention and periodic monitoring and of which the defendant was aware, had been employed by the defendant for approximately two years.

11. During his period of service to the defendant, the plaintiff always performed his job duties in a competent and professional manner, he maintained good time and attendance, and he was not been counseled or otherwise disciplined.

12. Despite his good work record, in early May 2007 plaintiff was prevented from returning to work and then terminated because he had missed several work days due to having to be medically evaluated because he was experiencing dizziness.

13. The defendant made this refusal even though the plaintiff presented them with a note on or about May 4, 2007 from his physician saying that he was medically cleared to return to work.

14. Upon information and belief, the plaintiff was illegally discriminated against and terminated based on his medical condition.

15. Upon information and belief, the defendant does not maintain an office or mechanism for the reporting of discrimination, harassment or other similar complaints nor do they possess or distribute to employees a formal, written anti-discrimination policy.

16. Since his termination by the defendant, the plaintiff has been unable to find suitable replacement employment.

**AS AND FOR A FIRST CAUSE OF ACTION BASED ON DISABILITY
PURSUANT TO THE AMERICANS WITH DISABILITIES ACT OF 1990**

17. The plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "16" as though fully set forth herein.

18. By engaging in the foregoing conduct, defendant has violated rights guaranteed to the plaintiff under the American's with Disabilities Act in that plaintiff was disparately treated based on his disability.

19. As herein described, the defendant acted intentionally, with malice, or with reckless disregard for plaintiff's rights, proximately causing plaintiff mental anguish, conscious pain and suffering, emotional distress, and the loss of income and other related benefits, thereby entitling plaintiff to an award of compensatory and punitive damages and an award of reasonable attorney's fees.

**AS AND FOR A SECOND CAUSE OF ACTION BASED ON
DISABILITY PURSUANT TO THE NEW YORK EXECUTIVE LAW §290**

20. The plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "19" as though fully set forth herein.

21. By engaging in the foregoing conduct, defendant has violated rights guaranteed to the plaintiff under the State Human Rights Law in that plaintiff was disparately treated based on his disability.

22. As herein described, the defendant acted intentionally, with malice, or with reckless disregard for plaintiff's rights, proximately causing plaintiff mental anguish, conscious pain and suffering, emotional distress, and the loss of income and other related benefits, thereby entitling plaintiff to an award of compensatory damages.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Pedro Rivera respectfully requests that this Court assume jurisdiction herein and thereafter:

1. Award plaintiff appropriate compensatory and punitive damages in an amount to be defined and determined;
2. Award reasonable attorney's fees and the costs of this action;
3. Award such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiff demands a jury trial for all claims stated herein.

Dated: White Plains, New York
October 8, 2007

Respectfully submitted,
Law Office of Paul N. Cisternino, P.C.
Attorneys for Plaintiff



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